

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CHARLOTTE BENNETT, : Case No.: 22-cv-7846
Plaintiff, :
v. :
ANDREW M. CUOMO, et al., : New York, New York
Defendants. : January 4, 2024
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TRANSCRIPT OF STATUS CONFERENCE HEARING
BEFORE THE HONORABLE SARAH L. CAVE
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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2 THE COURT: Good afternoon. This is
3 Magistrate Judge Cave. We're here for a discovery
4 conference in Bennett versus Cuomo; Case Number:
5 22-cv-7846.

6 May I have the appearances, starting with
7 the plaintiff, please.

8 Do we have plaintiff's counsel on the line?
9 Please state your appearance.

10 MS. SCHNELL: Sorry, Your Honor. Laura
11 Schnell for plaintiff, Charlotte Bennett.

12 THE COURT: Okay. Good afternoon.

13 Counsel for Mr. Cuomo?

14 MS. TRZASKOMA: Good afternoon, Your Honor.
15 Theresa Trzaskoma from Sher Tremonte on behalf of
16 Former Governor Cuomo. I'm in my office, joined by
17 my colleague, Allegra Noonan and my co-counsel, Rita
18 Glavin of Glavin PLLC is also here.

19 THE COURT: Thank you.

20 For Ms. DeRosa? Counsel for Ms. DeRosa?

21 Do we have counsel for Ms. DeRosa on the
22 line? If so, please state your appearance.

23 MR. MORVILLO: Good afternoon, Your Honor.
24 This is Gregory Morvillo. I'm sorry, I was on mute.
25 Sarah Sulkowski and Anthony Gruppuso are also on the

1 call. Ms. Sulkowski will be taking the lead for Ms.
2 DeRosa today.

3 THE COURT: Okay. Thank you.

4 Ms. DesRosiers?

5 MR. SCHWAB: Hello. You've got Soren
6 Schwab of Debevoise & Plimpton, on behalf of
7 defendant, Jill DesRosiers. And I'm joined on the
8 line by my colleague, Leah Rosenberg.

9 THE COURT: I'm sorry, who was the other
10 person?

11 MR. SCHWAB: Leah Rosenberg.

12 THE COURT: Okay. Thank you.

13 For Ms. Mogul? Counsel for Ms. Mogul?

14 MS. MESSINA: This is Brianna Messina from
15 Orrick Herrington & Sutcliffe. And I believe Mike
16 Delikat will be joining as well.

17 THE COURT: Okay. Thank you.

18 Counsel for Ms. Boylan?

19 MS. PERRY: Good afternoon, Your Honor.

20 This is Danya Perry. I am joined by my colleague,
21 Krista Oehlke and by my co-counsel, Julie Gerchik.

22 THE COURT: Okay. Good afternoon.

23 And for the Attorney General's Office?

24 MS. LONGLEY: Hi. Good afternoon,
25 Your Honor. This is Serena Longley from the

1 Attorney General's Office. I'm also joined by my
2 colleagues on the phone, Michael Jaffe and James
3 Cooney. We may have another colleague join, but
4 he's currently not on.

5 THE COURT: Okay. Thank you.

6 Is there anyone else who's joined who
7 wishes to state their appearance?

8 MR. DELIKAT: Yes, Your Honor. It's Mike
9 Delikat, and I'm going to stand up for --

10 THE COURT: I'm sorry, sir. I can't hear
11 any of what you're saying. Your line is breaking
12 up.

13 MR. DELIKAT: Is that better?

14 THE COURT: Slightly.

15 MR. DELIKAT: Mike Delikat. And --

16 THE COURT: I'm sorry. I'm not hearing. I
17 think you said "Mr. Delikat," but it's very
18 difficult to hear you, sir.

19 MR. DELIKAT: I'll call on a landline.

20 THE COURT: If you could, please. Thank
21 you.

22 We'll wait for him to rejoin. In the
23 meantime, anyone else?

24 Okay. Thank you. We'll begin once we have
25 Mr. Delikat rejoin us.

1 Was that Mr. Delikat who just rejoined?

2 MR. DELIKAT: Yes. I'm back in on a
3 landline, Your Honor, for Defendant Mogul, and I'm
4 joined by my colleague, Brianna Messina.

5 THE COURT: Okay. Thank you very much.
6 All right.

7 Well, we're here today because Mr. Cuomo
8 requested a conference with respect to his subpoenas
9 to Ms. Boylan and the Attorney General's Office. I
10 did just first want to say, though, that the Court
11 received a barrage of filings from the parties and
12 the non-parties over the last 24 hours, including as
13 recently as 19 minutes before the conference, which
14 is very much unappreciated. Some of the filings
15 were the transcripts, which the Court had to request
16 because there were transcripts from the proceedings
17 in front of Judge Merkl that the parties referred to
18 or were otherwise relevant to this and the parties
19 neglected to provide them. And then, otherwise,
20 last minute requests to appear, which the Court has
21 granted, and then an additional submission of
22 documents that I was somehow expected to review in
23 the 19 minutes before this conference began. That's
24 unappreciated. It's disappointing, given the
25 quality of the federal practitioners who are

1 appearing on this call, and the Court does not
2 countenance it.

3 Going forward, we will put additional
4 restrictions on the deadlines for the parties to
5 comply with before conferences, but we will not
6 countenance chaos, and the parties should be aware
7 of that and should comport themselves accordingly.

8 Now, I'd like to begin with the subpoena to
9 Ms. Boylan, but what I would like to start with on
10 that issue, though, is the question of the status of
11 Ms. Bennett's production of documents; specifically,
12 her communications with Ms. Boylan to date.

13 So, Ms. Schnell, could I ask you to start
14 with that, please.

15 MS. SCHNELL: I believe we have produced
16 those documents, Your Honor.

17 THE COURT: Okay. So there are no
18 remaining communications between Ms. Bennett and
19 Ms. Boylan that remain to be produced?

20 MS. SCHNELL: Not that I'm aware of. I
21 will double-check, but I am pretty confident of
22 that.

23 THE COURT: Okay. And are there any other
24 documents that Ms. Bennett has that are somehow
25 communications or other correspondence relating to

1 Ms. Boylan?

2 MS. SCHNELL: No.

3 THE COURT: All right. Thank you. Okay.

4 Would Mr. Cuomo's counsel like to start,
5 specifically, now that you do have documents that
6 Ms. Bennett has produced, or communications that Ms.
7 Bennett has produced with respect to Ms. Boylan, who
8 is obviously not a party to this case, why anything
9 further from Ms. Boylan is relevant and necessary?

10 MS. TRZASKOMA: Good afternoon, Your Honor.
11 Theresa Trzaskoma, and I will start by apologizing
12 for any chaos. That is certainly not our intention,
13 and we appreciate a no-chaos rule and will abide by
14 it. I think, you know, the last minute -- the very
15 last-minute filing was simply to put before
16 Your Honor, not expecting Your Honor to have an
17 opportunity to review it before this conference, but
18 so that you would have it available afterwards.

19 But we have received from Ms. Bennett
20 certain communications with Ms. Boylan which confirm
21 what we believed, which is that Ms. Bennett and
22 Ms. Boylan were in communication. We thought it was
23 at least as early as January of 2021, but we now
24 know that it was a month earlier, in early December,
25 right around the time that Ms. Boylan first made

1 public allegations against Governor Cuomo.

2 We know from those communications that they
3 were coordinating with each other, with others, with
4 PR consultants, with Ms. Boylan's campaign staff,
5 with reporters. And, you know, our view -- and we
6 don't know whether Ms. Bennett retained everything
7 that Ms. Boylan retained.

8 For example, we believe that they may have
9 been communicating on self-deleting -- you know,
10 apart from what we got, which are communications
11 across a variety of platforms, like Instagram,
12 Twitter, other forms of communication. We think
13 that they were -- they may have been communicating
14 on encrypted apps, like Confide and Signal, that are
15 self-deleting. I don't know.

16 It appears, perhaps, Ms. Bennett didn't
17 retain any of that, if it existed. I don't know if
18 it exists with Ms. Boylan. I know it appears, for
19 example, from the discovery that we've seen, that
20 Ms. Boylan was or is writing a book. We believe
21 that she likely retained -- she probably kept notes
22 of her calls.

23 For example, we know that there was a
24 call -- at least one, probably many more -- calls
25 between Ms. Bennett and Ms. Boylan. I don't know if

1 Ms. Boylan took notes of those calls, if she
2 conveyed to other third parties, including the
3 reporters, the PR folks, other complainants,
4 information that she was getting from Ms. Bennett or
5 information she was conveying to Ms. Bennett.

6 So, in short, I don't have any confidence
7 that the entire universe of their communications you
8 know, has been provided to us. And Ms. Boylan is a
9 non-party, but she is a highly relevant witness for
10 purposes of discovery. I will note that she --
11 Ms. Boylan was identified in both our initial
12 disclosures and in Ms. Bennett's initial
13 disclosures.

14 I know that Ms. Boylan is relying on a
15 letter that Ms. Bennett's counsel sent saying that
16 they do not intend at this time to call Ms. Boylan
17 as a witness at trial. I don't think that has any
18 bearing on whether we're entitled to take discovery
19 from Ms. Boylan. But I would note that Governor
20 Cuomo may well call Ms. Boylan as a witness at
21 trial, and, you know, in large part because it's
22 hard to understand -- you know, almost impossible to
23 understand the circumstances of Ms. Bennett's coming
24 forward with her public allegations against the
25 governor without understanding what was going on

1 with Ms. Boylan.

2 And there are other -- you know, I'm happy
3 to address the relevance issues, but just in terms
4 of the question that Your Honor posed, which is, why
5 do we need additional discovery, document discovery
6 from Ms. Boylan, I think there is likely a treasure
7 trove there, and we're entitled to it.

8 THE COURT: Well, I'd just like to
9 understand, with respect to Mr. Cuomo's subpoena to
10 Ms. Boylan, though. I'm just pulling it up here.
11 It's pretty broad. You know, there are 19 different
12 requests here, and they don't just relate to
13 Ms. Bennett. Number 1 and number 17 do, but there's
14 a lot here as to Ms. Boylan, who is not a party to
15 this case. And although there's a reference, two
16 references in paragraphs 5 and 125 to her
17 announcement of her allegations against Mr. Cuomo.
18 She's otherwise -- those are not described in
19 detail. So I'm just -- I'm struggling with why
20 anything other than her communications with
21 Ms. Bennett, which you may have some, but admittedly
22 maybe not all, of why there's anything else here
23 that's relevant in that regard.

24 MS. TRZASKOMA: Yeah, I mean, I think this
25 goes to Governor Cuomo's -- it, in part -- so it

1 goes to two things, Your Honor. One, it goes to
2 what I would say is Ms. Bennett's credibility and
3 her motivations in coming forward. And so, you
4 know, Ms. Bennett -- or Ms. Boylan was making
5 allegations, and Ms. Bennett was coordinating with
6 her.

7 And as we discussed on the call relating to
8 Hamilton College, we do think that there is a theme
9 with Ms. Bennett, which is that she made supporting
10 victims of sexual harassment and sexual assault,
11 kind of, her personal brand. And I'm not saying
12 that lightly. I'm saying that based on a résumé
13 that I have seen, and on, you know, her e-mails to
14 others.

15 And I think, you know, we're entitled to
16 explore what motivated Ms. Bennett to come forward,
17 which were Ms. Boylan's allegations. At some point,
18 information started to come out that Ms. Boylan was
19 unreliable and untruthful. And Ms. Boylan -- I
20 mean, Ms. Bennett, nevertheless, continued to stand
21 shoulder to shoulder with Ms. Boylan. And I think
22 that is very important information relevant to Ms.
23 Bennett's motivations and her credibility. And, you
24 know, we believe that Ms. Bennett embellished her
25 allegations in order to support Ms. Boylan and

1 continued to do so even after it became clear that
2 Ms. Boylan had not been truthful.

3 And so it's all those circumstances around
4 what was happening in late 2020, in the beginning of
5 2021, where, you know, they are all -- where
6 Ms. Bennett and Ms. Boylan are communicating with
7 reporters, they're communicating with PR folks, and
8 they're communicating with other complainants to
9 recruit others to come forward. And the fact that
10 Ms. Boylan was not truthful, had ulterior motives,
11 and, you know, either hoodwinked Ms. Bennett or
12 manipulated her is an important part of Governor
13 Cuomo's defense.

14 THE COURT: Right. But all of that is
15 going to be in their communications with each other.
16 There's not going to be a mini trial in this case
17 about Ms. Boylan. She's not a party to this case.
18 And Mr. Cuomo doesn't have any claims against
19 Ms. Boylan in this case. So going for the --

20 MS. TRZASKOMA: Well, I --

21 THE COURT: -- throat of the truth or
22 falsity of what Ms. Boylan was alleging, even if
23 what Ms. Boylan was alleging was false, and I have
24 no finding on that one way or the other, that
25 doesn't mean that what Ms. Bennett said was true or

1 false. Those two things are totally independent of
2 each other.

3 MS. TRZASKOMA: Well, I'm not proposing a
4 mini trial, certainly, Your Honor, but what I am
5 proposing -- what we are seeking is, you know, under
6 the broad ambit of what's discoverable, we are
7 seeking information about the reliability of
8 Ms. Boylan's own allegations and the fact that
9 Ms. Bennett willingly jumped on that bandwagon
10 and -- and so, you know, Your Honor -- I mean, they
11 coordinated with each other. And the fact that
12 Ms. Bennett was coordinating with a person who was
13 not being truthful is, you know -- and who was doing
14 so -- Ms. Boylan was doing so for the purpose of,
15 you know, furthering her political campaign is
16 just -- it's really all part of the atmosphere of
17 what prompted Ms. Bennett to come forward.

18 And it's not a mini trial. It is, as I
19 said, like, you know, it's very relevant to what
20 Ms. Bennett was doing. And, you know, to the point
21 of -- I don't think this is all in their
22 communications necessarily. I think there's going
23 to be a lot of information about the nature and
24 reach and scope of their joint effort to coordinate,
25 recruit and encourage others is absolutely going to

1 be part of what's in Ms. Boylan's documents and not
2 necessarily part of what's in Ms. Bennett's.

3 THE COURT: I appreciate that, but there
4 has to be a tie to Ms. Bennett and her claim. And
5 what Ms. Boylan -- that Ms. Boylan may have
6 encouraged some other complainant to do something
7 independent of Ms. Bennett, that doesn't have
8 anything to do with this case. That's not relevant.

9 MS. TRZASKOMA: Well, I guess I -- I mean,
10 I hear that, but I vehemently disagree because I
11 think -- you know, for example, part of what we
12 think was motivating Ms. Bennett is that Ms. Boylan
13 was running for political office at the time this
14 all came out. Ms. Bennett may have been looking for
15 a job. I don't know. Maybe she wanted to work with
16 Ms. Boylan.

17 We have -- you know, part of the
18 information that we submitted to the Court is a
19 calendar invite between -- in December of 2020
20 between Ms. Bennett, Ms. Boylan and Ms. Boylan's
21 campaign manager, or who we believe is Ms. Boylan's
22 campaign manager.

23 And I do think that Governor Cuomo's
24 defense -- we don't want a mini trial, but we are
25 entitled to explore whether Ms. Boylan's allegations

1 were true or not and what Ms. Bennett knew or didn't
2 know about that. And I think, you know -- and
3 just --

4 THE COURT: When is --

5 MS. TRZASKOMA: -- there's a very big
6 difference between -- yeah. Sorry.

7 THE COURT: When is Ms. Bennett's
8 deposition?

9 MS. TRZASKOMA: I'm sorry?

10 THE COURT: When is Ms. Bennett's
11 deposition?

12 MS. TRZASKOMA: We have not scheduled it.
13 Ms. Bennett has not completed her production of
14 documents. On a call last week, I think, they were
15 not able -- Ms. Schnell was not able to tell us when
16 that would be completed. But we -- you know, but we
17 do want and are entitled to this non-party discovery
18 in advance of that deposition so that we have, you
19 know, as much information as we can get about what
20 was going on so that we are able to intelligently
21 and fully and capably question her on these issues.

22 THE COURT: Right. But why do you need it
23 before Ms. Bennett's deposition? I mean, Ms. Boylan
24 is a non-party, so necessarily the burden on her
25 should be minimized as much as possible. She's not

1 required to carry the load for Ms. Bennett. You
2 guys have to do your work. The defendants have to
3 do their work as to Ms. Bennett and bring out -- if
4 there are things that Ms. Bennett says about
5 Ms. Boylan, then you have a much stronger case -- or
6 much stronger argument why a further discovery from
7 Ms. Boylan might be relevant, but you're inverting
8 it in a way that's unfair to somebody who's a
9 non-party.

10 MS. TRZASKOMA: I don't think we are,
11 Your Honor. And I would note that plaintiff has
12 already taken non-party discovery, and Your Honor
13 has enforced non-party discovery without her having
14 taken a single deposition. So I don't -- I think,
15 you know, this is a normal discovery practice, which
16 is to gather as much information as possible about
17 the topics that you're going to depose a witness or,
18 you know, a party on, and to have that all available
19 to us. And I don't think Rule 26 put -- imposes a
20 particular order on us. And it's --

21 THE COURT: I wasn't saying that it did.
22 But in terms of somebody who has come forward and
23 objected, in part, on the grounds of burden, it
24 makes sense to --

25 MS. TRZASKOMA: Well --

1 THE COURT: -- pursue the information from
2 the parties first, and then see what's left and
3 what's needed from the non-parties.

4 MS. TRZASKOMA: Well, it's hard -- I mean,
5 part of this issue, Your Honor, is we have no idea
6 what Ms. Boylan has or what the burden is on her.
7 And I would say, you know, she has made this burden
8 argument without actually meeting her burden to show
9 it's some undue burden.

10 And, frankly, if she says, I have a million
11 communications with Ms. Bennett, and it's going to
12 require -- or with Ms. Bennett and about
13 Ms. Bennett, and it's going to take me a lot of time
14 to gather and produce them, that makes me want them
15 all the more. But I don't understand why she
16 cannot, for example, run simple search terms through
17 her communications and turn those over to us in
18 advance of our having to take Ms. Bennett's
19 deposition. And, likewise, I don't know why
20 Ms. Boylan cannot sit for a day-long deposition in
21 this matter.

22 THE COURT: All right.

23 MS. TRZASKOMA: And --

24 THE COURT: Go ahead. Finish your
25 statement, and then I want to hear from Ms. Boylan's

1 counsel.

2 MS. TRZASKOMA: Yeah. Again, just to go
3 back to the disclosures, both parties have
4 identified her as a witness with relevant
5 information, and under those circumstances, and
6 under all the circumstances here, you know, the
7 subpoena is proper and it should be enforced.

8 THE COURT: Thank you. All right.

9 Ms. Perry, do you or one of your colleagues
10 want to address the points that Ms. Trzaskoma has
11 made?

12 MS. PERRY: Yes. Thank you, Your Honor.
13 This is Danya Perry.

14 So just to, I guess, take the last point
15 made by Ms. Trzaskoma first, it's not the case that
16 both parties have identified her as a witness. As
17 Your Honor is aware, Ms. Katz, on behalf of the
18 plaintiff, has said they do not anticipate calling
19 Ms. Boylan as a witness. And it's certainly the
20 case that Mr. Cuomo does not want Ms. Boylan in this
21 case.

22 He has said in the Trooper 1 case that he
23 does not believe Ms. Boylan has relevant
24 information, as much as he's been hounding her with
25 subpoenas -- I believe we're up to 15. I may have

1 lost count -- in the other case, what he's trying to
2 do, and he said the quiet part out loud in that case
3 is relitigate the Attorney General's investigation
4 and prove himself, essentially, to be innocent.

5 In this case -- and he's also said another
6 quiet part out loud in that case, which is that he
7 does not -- you know, he had said in that case that
8 if Ms. Boylan had not been all over the complaint,
9 he would not be subpoenaing her.

10 Well, she really does not feature
11 prominently in this case. And, again, the plaintiff
12 has said that they're willing to take her out of the
13 case. But, nevertheless, he wants her in this case,
14 and it really is so that, as Ms. Trzaskoma just
15 said, they can impeach her. But there's no real
16 reason to impeach her. And it really is the
17 convoluted explanation that we just heard, was -- I
18 mean, in their letter they said it was to impeach
19 Ms. Boylan. They actually said that. And now,
20 under Your Honor's questioning, it was, well, it was
21 more indirect. It was to impeach Ms. Boylan to
22 somehow indirectly impeach Ms. Bennett.

23 That really is a bridge too far. It really
24 is to get campaign records and records about sexual
25 history and personnel records to somehow impeach

1 Ms. Boylan, which somehow would impugn Ms. Bennett
2 really, really is going too far afield.

3 But if we had been able to have a
4 productive meet and confer, I think we -- and
5 they've been willing to narrow the subpoena in some
6 ways -- I think we probably could have gotten to a
7 place where I do agree with Your Honor that
8 arguably, at least, requests number 1 and 17 are the
9 only requests that are moderately theoretically
10 relevant. Of course, they're overbroad because they
11 request all communications and all documents.

12 And I think, though, if the parties could
13 sit down and, you know, come to discussions, perhaps
14 communications that involve just sexual harassment
15 allegations against Mr. Cuomo, not all
16 communications with Ms. Bennett, perhaps there
17 are -- I don't know this, but perhaps there are
18 documents that would be relevant that have not been
19 produced. And so we would be willing -- as
20 Ms. Trzaskoma just said, we would be willing to run
21 limited searches for that. And I do agree it's
22 potentially relevant. I --

23 THE COURT: But can I interrupt -- can I
24 interrupt you for a second?

25 MS. PERRY: Of course.

1 THE COURT: Has Ms. Boylan done a search of
2 her communications to know what the universe is of
3 her communications with Ms. Bennett, what the volume
4 is?

5 MS. PERRY: Not just with Ms. Bennett. We
6 have -- in the other case, we had run a search and
7 there's a large volume of documents. I think we're
8 at about 500,000 that have been potentially relevant
9 in that case.

10 THE COURT: Okay.

11 MS. PERRY: And the subpoena in this case
12 is largely duplicative of that one, but I think if
13 the parties can come to terms, obviously, it would
14 be a much, much smaller universe of documents, and I
15 think that could be somewhat reasonable.

16 It is the case that Ms. Bennett and
17 Ms. Boylan are -- have become friendly, and they
18 talk about a lot of other things. I just reviewed
19 the communications that we got minutes before the
20 conference, and there are just a lot of, you know,
21 heart emojis, I think, and likes and that kind of
22 thing. So there are a lot of things I think would
23 be nonresponsive if we can just talk about, you
24 know, sexual allegations -- sexual misconduct
25 allegations. So I would like to think that

1 reasonable people can come to terms.

2 THE COURT: Do you know when Ms. Boylan and
3 Ms. Bennett began communicating about the
4 allegations against Mr. Cuomo?

5 MS. PERRY: Yes. I'm glad you asked,
6 Your Honor, because I did want to come to that
7 because Mr. Cuomo's papers -- the letter motion
8 requesting this conference says at least twice, and
9 it has been a theory of the case, that Ms. Boylan is
10 the provocateur in this case, that she induced other
11 people, including Ms. Bennett to the point here to
12 come forward; that she was the person that created
13 this domino effect.

14 And with regard specifically to
15 Ms. Bennett -- and from what I've seen in the
16 seconds that I had to look at these communications,
17 Ms. Bennett, it seems, from the complaint, came
18 forward with her sexual harassment allegations in
19 the spring or summer of 2020. She did not know
20 Ms. Boylan at the time. They had never met. They
21 knew nothing about each other. They were
22 completely, you know, parallel, had their own
23 independent, traumatic sexual harassment experiences
24 with the then-governor, and did not know each other,
25 had not spoken until Ms. Boylan came forward in

1 December of 2020. This is my understanding with
2 public tweets.

3 And then it was Ms. Bennett, as I
4 understand it, who came forward and reached out to
5 Ms. Boylan. This is my understanding. And, again,
6 I have an imperfect understanding, and I just saw
7 these records.

8 THE COURT: You're not under oath.

9 MS. PERRY: Thank you, Your Honor.

10 And so I think that's an inaccurate
11 rendition of the facts here, to say that Ms. Boylan
12 was the instigator here who created, you know, this
13 whole domino effect that took the governor down.

14 But, in any event, I think that, you know,
15 these -- I believe it's 19 categories of
16 documents -- really has nothing whatsoever to do
17 with the facts in this case -- I'm sorry, 17
18 categories of documents -- other than, as I
19 mentioned, you know, the communications and the
20 documents that go specifically to communications
21 with the plaintiff in this case and to her lawsuit.

22 And so I certainly would be willing to sit
23 down with Ms. Glavin and Ms. Trzaskoma and see if we
24 can work out reasonable search terms. I would like
25 to think that we can and wouldn't have to burden the

1 Court with that.

2 THE COURT: Okay. Thank you.

3 I do want to give Ms. Trzaskoma a chance to
4 respond, but I should hear from Ms. Sulkowski next
5 on behalf of Ms. DeRosa.

6 MS. SULKOWSKI: Thank you, Your Honor.

7 Sarah Sulkowski.

8 Your Honor, we agree with Governor Cuomo's
9 counsel, that it's clear that Ms. Boylan was the
10 instigator of the process that led to the filing of
11 this complaint. And importantly, the plaintiff, in
12 re-tweeting Ms. Boylan's initial allegations against
13 the governor, said expressly that these allegations
14 are emblematic of what the executive chamber under
15 Governor Cuomo was like, and, it appears, tailored
16 her own accusations to match those.

17 And so evidence that Ms. Boylan's
18 allegations were false and that she had -- her
19 credibility is at issue and that she had a motive to
20 lie, or perhaps multiple motives to lie, would go
21 directly to plaintiff's own credibility and the
22 credibility of her allegations. I don't think that
23 should be overlooked.

24 Again, you know, plaintiff's initial
25 disclosures named Ms. Boylan, not as a witness, but

1 as an individual likely to have discoverable
2 information relevant to this action. And those
3 initial disclosures have not been revised or
4 corrected. They're still extant, as well as
5 Ms. DeRosa's and Governor Cuomo's initial
6 disclosures, all of which identify Ms. Boylan as
7 having discoverable information.

8 THE COURT: All right. Well, it's
9 basically undisputed, and there's evidence now
10 before the Court that she had communications with
11 Ms. Bennett about her allegations concerning
12 Governor Cuomo. So I don't think there's any
13 dispute that the initial disclosures are correct in
14 including Ms. Boylan, but I think you're placing a
15 lot more weight on that than is warranted.

16 MS. SULKOWSKI: Well, the concept of
17 relevant information under Rule 26 is broad for a
18 reason: Because parties should be able to explore,
19 you know, what a plaintiff -- particularly what a
20 plaintiff herself denominates as relevant
21 information.

22 I know the Court doesn't have Ms. DeRosa's
23 document subpoena in front of it. I apologize for
24 that, but we didn't want to submit it at the last
25 minute. But it does seek categories of documents

1 extremely similar to those sought by Governor Cuomo;
2 for example, communications with or about Ms. DeRosa
3 and Governor Cuomo during the relevant period.

4 These, even if not directly with plaintiff,
5 go to the working environment in the executive
6 chamber, which is a core part of the allegations of
7 both women and, thus, to plaintiff's claims and
8 Ms. DeRosa's defense for those claims.

9 Communications concerning investigations of
10 allegations against Governor Cuomo -- you know,
11 again, if Ms. Boylan was orchestrating a campaign
12 against the governor, as we believe she was, these
13 communications may reveal that, and that would go to
14 Ms. Bennett's credibility as well.

15 THE COURT: How?

16 MS. SULKOWSKI: Well, again, if Ms. Boylan
17 persuaded Ms. Bennett to join her, or if
18 Ms. Bennett, on her own conformed to what we think
19 is her pattern of behavior, which is to see a woman
20 alleging sexual harassment or assault and to try to
21 buttress her claims with her own allegations,
22 perhaps by exaggerating things she experienced that
23 were de minimus, you know, the -- Ms. Boylan's
24 communications evidencing that orchestrated campaign
25 or the falseness of her own allegations that

1 Ms. Bennett then tailored her own to match would be
2 highly relevant.

3 THE COURT: Then all falls into the two
4 that we've been talking about, that Ms. Boylan's
5 counsel just said she was willing to work with you
6 about, which is the communications between
7 Ms. Bennett and Ms. Boylan.

8 MS. SULKOWSKI: Respectfully --

9 THE COURT: Yet that doesn't get you to all
10 of her communications with anybody else in the
11 governor's office about other complainants, for
12 example.

13 MS. SULKOWSKI: We think those would be
14 relevant because, again, if Ms. Boylan's
15 allegations, which Ms. Bennett has referred to as
16 emblematic, as indicative of what it was like in the
17 executive chamber, before she ever aired her own, if
18 those are false and her communications with others
19 demonstrate that they're false or they're
20 exaggerated or they're trumped up, that's relevant
21 to what plaintiff subsequently did and why she did
22 it.

23 I would like to mention at this point that,
24 you know, we had a meet and confer with Ms. Boylan's
25 counsel. They said they would take our requests

1 under consideration. They later came back to us and
2 reiterated that they would not produce anything to
3 us. And I would note that I believe
4 Governor Cuomo's counsel has received a de minimus,
5 you know, 25 pages. We haven't even received that.
6 We've received nothing. And they've told us we will
7 receive nothing. I appreciate their expressed
8 willingness today to reconsider that position, but I
9 don't think we should be forced to go back into a
10 meet and confer with counsel who could have made
11 these offers long ago without getting a ruling and
12 potentially, quite likely, have to be back before
13 the Court in short order.

14 THE COURT: Well, it's not shocking to me
15 that this group is not able to reach agreement among
16 themselves without Court intervention. So you're
17 here now, and I'm going to give you guidelines for
18 how you're going to meet and confer and what the
19 scope is going to be. But let me hear from Ms.
20 Trzaskoma again. In particular, if you could
21 address, you know, if the date range were to begin
22 in December 2020, for example, you know, tell me why
23 that's not sufficient.

24 MS. TRZASKOMA: Oh, that for us, is
25 sufficient. That is when -- I mean, we didn't know

1 when -- so, you know, as Ms. Perry said -- I think
2 she said that they didn't know each other, that
3 Ms. Bennett and Ms. Boylan didn't know each other
4 before then or, you know, may not have been
5 communicating.

6 But, in any event, it's really about the --
7 it's really about that time frame. We now know
8 that's basically when they started communicating, so
9 we're -- so, you know, we thought that the request
10 was not overly broad because it would be naturally
11 limited in time by the -- you know, when they were
12 communicating.

13 But I -- you know, I wanted -- I appreciate
14 Ms. Sulkowski's comments because I think they mirror
15 ours, which is -- so Ms. Bennett had complaints. As
16 I understand it, those -- the nature of her
17 complaints changed significantly and dramatically
18 after she started communicating with Ms. Boylan and
19 after -- she never said previously -- and I know --
20 she's going to disagree, I'm sure. It's not what
21 her complaint reflects, but I believe it's what the
22 evidence will reflect -- that she did not previously
23 complain that she was sexually harassed. And that
24 changed after she started speaking with Ms. Boylan.

25 And, you know, for Governor Cuomo's defense

1 of this case, I do not -- he is going to rely on
2 Ms. Boylan and the fact that she was out in public
3 making false accusations and using those false
4 accusations to recruit others to embellish their own
5 claims. And that is his defense. And I appreciate
6 that Ms. Boylan doesn't like it, Ms. Bennett doesn't
7 like it, a lot of the other complainants don't like
8 it, but that is his defense.

9 And just to Ms. Perry's point about the
10 issues in Trooper 1, as Your Honor knows, that
11 complaint is very different than this complaint; but
12 they both share a reliance on the Attorney General's
13 report. The Attorney General's report is part of
14 Ms. Bennett's complaint, just as it is Trooper 1's.
15 They have slightly different consequences. But
16 Ms. Bennett's entire retaliation claim has to do
17 with statements that were made on Governor Cuomo's
18 behalf after the AG report came out. And you cannot
19 understand the purpose of those statements and the
20 defense of him without understanding that the AG
21 report and investigation were deeply flawed, were
22 full of inaccuracies, and contained, you know,
23 allegations, credited allegations, including
24 Ms. Boylan's.

25 So, you know, to try to disentangle -- and

1 in Trooper 1, Judge Merkl, you know, I think
2 approached that case -- and you can see it,
3 Your Honor, I think, in the transcripts, which,
4 again, I apologize for not providing to Your Honor
5 earlier. I think you can see it there, that
6 Judge Merkl was hoping that case would get whittled
7 down, but it is as broad as it ever was.

8 And, you know, so to say that we wanted to
9 relitigate the Attorney General's report, yeah,
10 because it is front and center in that case, and it
11 is inevitably, unless the retaliation claims get
12 dismissed, it is going to be part of this case.

13 So it's not -- it is chopping us off at the
14 knees to say there can be a lawsuit that complains
15 about a defendant's reaction to a public report and,
16 you know, about statements that were made about how
17 unreliable it was and not for -- for Governor Cuomo
18 not to be able to explain to a jury why he believed
19 that and why it is true that it's unreliable.

20 So, you know, I think, and I appreciate
21 that Your Honor is going to give some guidance, but
22 I don't think that it is appropriate to say that
23 we're getting only the communications directly
24 between Ms. Bennett and Ms. Boylan because I do
25 think that Ms. Boylan was communicating with a lot

1 of other people around Ms. Bennett and Ms. Bennett's
2 allegations, and we were entitled to that as well.

3 THE COURT: Okay. Thank you.

4 MS. TRZASKOMA: And the final thing I would
5 say is I know that there is this letter, as I
6 mentioned, that, you know, Ms. Bennett is not going
7 to call Ms. Boylan as a trial witness. But in her
8 initial disclosures, she says she is going to rely
9 on Ms. Boylan's and Trooper 1's allegations. And if
10 Ms. Bennett is going to rely -- even if not calling
11 her as a trial witness, if she is planning to rely
12 in any way, shape, or form on Ms. Bennett's
13 allegations, we are entitled to full discovery about
14 those allegations.

15 THE COURT: Okay. Thank you.

16 Ms. Schnell, can you speak to that last
17 point about the suggestion that Ms. Bennett may be
18 relying on Trooper 1's or Ms. Boylan's allegations
19 to support her?

20 MS. SCHNELL: No. If you look -- we don't.
21 If you look at the complaint, we do not -- unlike
22 the Trooper 1 complaint, which if you looked at it,
23 Your Honor, it includes lengthy sections on each of
24 the women who made complaints about Governor Cuomo.
25 Ms. Bennett's complaint does not. Ms. Bennett's

1 complaint stands on whether she was sexually
2 harassed by Mr. Cuomo, not whether any of these
3 other women were.

4 THE COURT: Okay. Thank you.

5 Ms. Perry, any points that you want to
6 respond to before we try to have a more focused
7 discussion of the scope guidance that I'm going to
8 give you? And let me just say before you do that,
9 Ms. Longley, I appreciate that you've been waiting
10 here for 45 minutes. We will get to you very
11 shortly.

12 Go ahead, Ms. Perry. Any points you want
13 to make in response to what either Ms. DeRosa's or
14 Mr. Cuomo's counsel said?

15 MS. PERRY: I don't think I do, Your Honor.
16 Ordinarily, I do, but it's almost impossible to
17 respond to because there's nothing focused there.
18 They're basically just saying -- I mean, they have
19 said very explicitly, we want to relitigate the
20 entirety of the AG's report and that wasn't fair to
21 the governor, and, therefore, we get to take
22 incredibly broad, incredibly damaging, incredibly
23 burdensome, not particularly relevant discovery of a
24 non-party. And how can I really even respond to
25 that?

1 You know, I've made my points. If Your
2 Honor is even considering it, I certainly would
3 request some process and the opportunity to brief
4 that, but it just seems to me so outlandish and so
5 beyond the pale that it's hard to respond to at this
6 point any more than that.

7 THE COURT: Okay. Well, before we end
8 up -- I'm hoping to avoid any motion practice
9 altogether, so that's why I want to give you
10 guidance about what I want you to meet and confer
11 about, and hope that we can come to a resolution
12 through that process without there having to be
13 motion practice as to the other request.

14 So what the -- what I think the scope
15 should be, focusing on request number 1, which is
16 communications with Ms. Bennett about any
17 allegations of sexual harassment or misconduct by
18 Governor Cuomo, and number 17, which is
19 non-privileged communications concerning this
20 lawsuit -- this lawsuit or Ms. Bennett's lawsuit
21 against New York State, which, obviously, is not
22 before me, but I think the parties should focus on
23 those two requests.

24 To Ms. Trzaskoma's point, is not limited to
25 just communications between Ms. Bennett and

1 Ms. Boylan, but if Ms. Boylan had any communications
2 about Ms. Bennett or Ms. Bennett's allegations with
3 someone else, then the search terms should -- that
4 the parties agree on should capture those
5 communications as well.

6 And then the time period would be from
7 December 2020. I don't know the exact date in
8 December, but the parties should have that.
9 December 2020 through, I believe it's September 14,
10 2022, which is the date Ms. Bennett filed her
11 complaint in this case, and that was the same
12 limitation that we put on the non-party subpoena to
13 Mr. Cuomo's sister back in November.

14 So let me just first ask Ms. Perry if those
15 scope limitations need any clarification.

16 MS. PERRY: No. I think that's clear,
17 Your Honor. Thank you.

18 THE COURT: Okay. Ms. Trzaskoma?

19 MS. TRZASKOMA: I think we would just want
20 to make sure that it's through the date of the
21 subpoena, so from December 2020 through the date of
22 the subpoena. And I appreciate Your Honor's
23 clarification of that.

24 THE COURT: Why? Why past the date that
25 the complaint was filed?

1 MS. TRZASKOMA: Because I believe they -- I
2 mean, look, I don't know if there's a representation
3 that they did not communicate about Ms. Bennett's
4 lawsuit or allegations after the lawsuit was filed.
5 Then there should be no issue. But if there were
6 communications about the lawsuit afterwards, that's,
7 you know, also relevant.

8 MS. PERRY: Your Honor, why don't we look
9 at that and --

10 THE COURT: Yes. Why don't you see what
11 the volume is.

12 MS. PERRY: -- something we can talk about.
13 Yes.

14 THE COURT: Maybe you can do a -- yeah,
15 Ms. Perry, maybe you can do a cutoff at the date of
16 the complaint and then afterwards and see what the
17 volume is after. I'm trying to be consistent with
18 respect to the non-parties, and I'm also, again,
19 mindful of the burden on Ms. Boylan, so, hence, the
20 desire to -- I mean, that already is an almost
21 two-year time period that we're imposing on her.

22 So, for now I'm going to limit it to the
23 same cutoff date of September 14, 2022 as we imposed
24 with respect to Ms. Cuomo, but the parties can meet
25 and confer about that. If there are, you know, two

1 things in January 2023 or something, then it's
2 presumably not very burdensome, but a -- well, for
3 now, the cutoff date will be September 14, 2022.

4 Okay. With that guidance -- I'm sorry.

5 Ms. Sulkowski, did you want any clarification or
6 comment on the proposed scope limitation?

7 MS. SULKOWSKI: No. That's clear,

8 Your Honor. Thank you.

9 THE COURT: Okay.

10 All right. I appreciate the parties'
11 willingness to meet and confer about that. And at
12 the end of this conference, we'll talk about a date
13 by which I'll want a report back from you on that.

14 Any other issues with respect to the
15 subpoena to Ms. Boylan at this time?

16 MS. TRZASKOMA: Your Honor, this is Theresa
17 Trzaskoma.

18 Not with respect to the subpoena to
19 Ms. Boylan or directly, but just to what Ms. Schnell
20 represented to the Court in terms of Ms. Bennett not
21 relying on Ms. Boylan's allegations. And, you know,
22 I just want to clarify that she -- that what I
23 understood Ms. Schnell to be saying is that she was
24 relying solely on -- Ms. Bennett was going to rely
25 solely on her own allegations, and that she was not

1 going to rely on the allegations of Ms. Boylan or
2 anyone else, to include, for example, Trooper 1, in
3 connection with establishing her claim.

4 And so it would be helpful to get clarity
5 on that because that's not what the -- you know,
6 that's not what's in the complaint and it's not
7 what's in their initial disclosures. And so I --
8 you know, I want to make sure, as we're going
9 forward with discovery, that we have a clear
10 understanding of what this is going to look like as
11 we go forward.

12 THE COURT: Well, I mean, you can get a
13 transcript of this conference, and you'll have
14 Ms. Schnell's words.

15 But, Ms. Schnell, if there's anything you
16 want to elaborate on or clarify, you're welcome to.

17 MS. SCHNELL: You know, if you look at the
18 complaint, we certainly reference the fact that
19 Lindsey Boylan came forward and made a blog post.
20 And that is a fact that, then, Charlotte came --
21 Ms. Bennett came forward as well.

22 So are we not going to refer to that fact
23 in terms of the chronology of what happened here?
24 But we are not going to call her, we are not going
25 to try to prove that Governor Cuomo sexually

1 harassed her at all.

2 MS. TRZASKOMA: Your Honor, this is --
3 again, this is Theresa Trzaskoma.

4 This is exactly my concern, is that if
5 Ms. Bennett is going to get up and say Ms. Boylan
6 made allegations against Governor Cuomo and I
7 decided to come forward too, we're entitled to show
8 that these other allegations are not true.

9 THE COURT: But Ms. Bennett is not saying
10 that what Ms. Boylan alleged is true. She's saying
11 that she said it. And all of this -- that's all a
12 question for Judge Broderick, if and when any of
13 these claims get to trial, what the scope of the
14 evidence will be that is actually before the jury.
15 So --

16 MS. TRZASKOMA: Well, I -- I think that it
17 is --

18 THE COURT: I'm not going to --

19 MS. TRZASKOMA: I just want to make a
20 record that Governor Cuomo is being denied discovery
21 into that point because I do not -- because it is
22 extremely prejudicial if this is supposed to be a
23 case solely about Ms. Bennett and Ms. Bennett gets
24 in the side door someone else's -- the fact that
25 someone else made an allegation, which the jury,

1 inevitably, without -- you know, without our ability
2 to say that that allegation turned out to be totally
3 fabricated and hogwash, you know, and to prove it,
4 to back it up, I think that's just -- that's exactly
5 the point, that this -- you know, we're not even
6 going to be in a position to move in limine properly
7 if we cannot show the incredible prejudice that
8 would result.

9 I mean, just imagine the motion in limine,
10 which is, you know, without the benefit of being
11 able to establish through discovery that Ms. Boylan,
12 you know, fabricated, lied, threatened witnesses
13 and, you know, lied about the circumstances under
14 which she left EFD.

15 You know, her initial allegation is that
16 she left because Governor Cuomo harassed her, and
17 that's not true. That's the allegation that
18 Charlotte Bennett is going to be referring to.

19 THE COURT: Okay. But it is not correct
20 for you, your statement, Ms. Trzaskoma, that
21 Mr. Cuomo is being denied discovery. I just ordered
22 that he's being allowed to get discovery and I
23 circumscribed the scope of it. So don't distort the
24 record and don't put words in my mouth. If --

25 MS. TRZASKOMA: Well, I -- so I -- Your

1 Honor --

2 THE COURT: Ms. Bennett does not need to
3 even mention Ms. Boylan. The question is whether
4 what she alleged Mr. Cuomo did, whether that
5 happened or not. The only thing that matters is
6 what Ms. Bennett says about that.

7 MS. TRZASKOMA: I --

8 THE COURT: So I realize that the
9 allegation is in the complaint that Ms. Boylan said
10 something first, but it's not relevant to whether
11 what Ms. Bennett is alleging is true or not; and
12 continually trying to shove that door open is not
13 going to work.

14 MS. TRZASKOMA: No. Your Honor, I am not
15 trying -- I would like the door to be slammed firmly
16 shut, and Ms. Schnell has left the door wide open.
17 And I apologize for overstating that the Court is
18 not denying us discovery, but has limited the
19 discovery such that we, Governor Cuomo is not going
20 to be in a position to be able to establish, you
21 know, in the event that Ms. Bennett gets up and says
22 Ms. -- I saw this tweet from Ms. Boylan, she said
23 this happened to her, and we have to be able to meet
24 that. And I don't have any -- you know, we're
25 not -- this is still early discovery. I don't have

1 a crystal ball. I can't foresee the future, but
2 I -- you know, I think it -- to allow Ms. Bennett
3 even to make that statement or even to contemplate
4 that she's going to be able to make -- or try to
5 make that statement without giving Governor Cuomo
6 discovery into that issue is very problematic.

7 THE COURT: Well, at this time, I have not
8 been persuaded that requests 2 through 16 and 18 and
9 19 are relevant and proportionate to the needs of
10 this case. So at this time, based on the record
11 before me, the only request to which Ms. Boylan is
12 going to be required to respond, and the parties
13 have been given guidance about how to meet and
14 confer about a scope for that response, are numbers
15 1 and 17.

16 If something changes and Mr. Cuomo thinks
17 that he has good cause to have me broaden the scope
18 of what I have permitted as to Ms. Boylan, you can
19 come back and show me that. That's always the case.
20 But in -- for now, you have this transcript. And if
21 something changes and you have good reason to come
22 back to me and show me that something more is
23 warranted, you can do so. But we need to move on.

24 MS. TRZASKOMA: I appreciate that,
25 Your Honor.

1 THE COURT: We need to move on to the
2 Attorney General folks who have been very, very
3 patient.

4 So do you want to address -- to start with
5 that, Ms. Trzaskoma, the issues with respect to the
6 AG and, in particular, their suggestion that we stay
7 that while Judge Merkl is completing her
8 consideration of the motion for reconsideration?

9 MS. TRZASKOMA: So as I -- so I don't think
10 that there's any reason for this Court to defer to
11 what is happening in the Trooper 1 action. And as I
12 understand it, I don't -- that motion for
13 reconsideration was fairly limited to the July 2023
14 order on our motion to compel, which has -- you
15 know, is no longer relevant because what we're
16 talking about and what Judge Merkl is considering
17 now with respect to the documents from the AG's
18 Office is a completely different universe of
19 materials, much narrower.

20 And, you know, so I don't actually know
21 that Judge Merkl is considering the motion for
22 reconsideration, but the issues that the AG has
23 raised in any event, were never decided by
24 Judge Merkl's July 2023 order. They are presenting
25 in this case in a completely different way, and I

1 think that we should move on to briefing those
2 issues. They are, you know, complicated issues.
3 The Attorney General has claimed, you know,
4 sovereign immunity from any subpoena and has also --

5 THE COURT: Let's just -- let's back way
6 up, though.

7 MS. TRZASKOMA: Yes.

8 THE COURT: Have there been any discussions
9 about what the AG may be willing to produce to you?

10 MS. TRZASKOMA: Our understanding is the AG
11 is willing to produce nothing to us.

12 THE COURT: All right.

13 Ms. Longley, is that the case? Or is there
14 some universe -- and I know you had lengthy
15 discussions with Judge Merkl in the Trooper 1 case
16 about what narrow range of materials that the AG was
17 willing to explore.

18 To the extent that I'm right about that, is
19 there any universe of documents with respect to
20 Ms. Bennett; and you've just heard the lengthy
21 discussion about how we're trying to focus non-party
22 discovery on Ms. Bennett's allegations here. Is
23 there anything that the AG has that it would be
24 willing to consider providing?

25 MS. LONGLEY: Hi. Yes, Your Honor. Our

1 office is always willing to consider anything
2 reasonable and proportional and relevant to the case
3 if it will resolve the subpoena and not require us
4 to engage, continually engage in this burdensome
5 litigation. We were willing to try that in
6 Trooper 1. Unfortunately, it did not result in
7 resolving the subpoena.

8 We are -- you know, we -- I would say, as a
9 general matter we would -- we were open to a similar
10 approach to the Bennett subpoena; however, when we
11 said, are there any path forward where we give you
12 non-privileged materials that are tailored to the
13 complaint and the legal claims in the Bennett case,
14 the answer was, we want the interview memos, and
15 they will not agree to any resolution that doesn't
16 include interview memos. And given the extensive
17 litigation we've had with them on multiple fronts,
18 we're not willing to give it piecemeal and just give
19 them some materials if it's not going to resolve the
20 subpoena.

21 So in Trooper 1, we did voluntarily give
22 them in an act of good faith -- in an opening act of
23 good faith, we said, here, we'll look at documents
24 that were collected by the investigators that
25 reference Trooper 1 by name. And we believe you

1 could get these materials under the FOIL statute,
2 which is the way the State has waived sovereign
3 immunity in the context of -- you know, as it would
4 relate to this case.

5 So we offered that. We thought it was
6 reasonable. It didn't go -- you know, it didn't go
7 as we would have liked it to go. So I think in this
8 case, you know, we would be willing to do that if
9 Defendant Cuomo would agree that that would resolve
10 the subpoena and he wouldn't move to compel
11 compliance and seek our privileged material.

12 THE COURT: So, Ms. Trzaskoma, is the
13 interview memo do or die?

14 MS. TRZASKOMA: Yeah, that's what we're
15 seeking, Your Honor. And we don't agree that they
16 are privileged. And we don't agree that the
17 Attorney General's Office enjoys sovereign immunity
18 from federal subpoena.

19 And I don't -- you know, what we got in
20 Trooper 1 were four documents with Trooper 1's name
21 on them. They were, like, telephone records or
22 something. And, you know, it's not it -- it's not
23 the material that we're looking for. We're looking
24 for prior statements by witnesses with information
25 relevant to Ms. Bennett's claims.

1 And so I don't think there's any point in
2 delaying. I think, you know, we need to move on
3 with briefing this. And we just vehemently disagree
4 on the law here.

5 THE COURT: Okay. But how is Judge Merkl's
6 ruling -- she quashed your subpoena in --

7 MS. TRZASKOMA: She did not quash it.

8 THE COURT: Well, she denied your motion to
9 compel, I guess, so --

10 MS. TRZASKOMA: She did. She found it was
11 too broad, and it has since been narrowed. And she
12 now then directed the Attorney General's Office to
13 provide a privilege log of the interview memos,
14 which the AG's Office did. Judge Merkl then
15 directed the AG's Office to provide her with those
16 interview memos for in camera review, which the
17 Attorney General did in late -- or, like, mid- to
18 late December.

19 I don't know how Judge Merkl -- what
20 Judge Merkl's plan is, but I don't think it involves
21 resolving the objections that the Attorney General's
22 Office has -- is asserting here, and including, you
23 know, sovereign immunity, so -- and the universe of
24 documents is different. And --

25 THE COURT: But it's the interview memo.

1 It's the same thing you're asking for here. Why --

2 MS. TRZASKOMA: Well, it's a different
3 universe of interview memo.

4 It's a different universe of interview
5 memos. I mean, look, our dispute with the Attorney
6 General has been going on for more than a year in
7 front of -- in the Trooper 1 action. And, you know,
8 I don't know what to say, except I think -- I don't
9 think -- I think we have an independent lawsuit
10 here. It is related, but it is not the same. And
11 Judge Merkl, you know, she has indicated, as you
12 probably saw in the prior transcript, that she would
13 need additional briefing on the sovereign immunity
14 issue. And that hasn't --

15 THE COURT: Okay. But why should we
16 be briefing it twice?

17 MS. LONGLEY: Your Honor --

18 MS. TRZASKOMA: We haven't briefed it.

19 MS. LONGLEY: This is Serena from the AG's
20 Office.

21 I'd like to just jump in, if I can, to say
22 that the materials and the briefing that are at
23 issue right now and that Judge Merkl ordered a
24 privilege log and in camera review of are the exact
25 same category of materials that Cuomo is seeking in

1 the Bennett case. And those two categories are
2 unredacted transcripts and interview memos.

3 And we have raised the same objections in
4 both cases to those categories of documents. And
5 it, you know, I can't predict 100 percent when Judge
6 Merkl will rule, but based on her asking for in
7 camera review, it appears that she is at least
8 considering ruling on the privilege issue of the
9 interview memos and the unredacted transcript.

10 And it is our position that -- again, not
11 knowing the exact scope of her ruling, that it could
12 have some preclusive effect on Defendant Cuomo in
13 this case, and that it makes sense, given our
14 non-party status, given the state of affairs in the
15 Bennett case and where it is, you know, in
16 discovery, that it's appropriate to wait and see
17 what Judge Merkl does, and see if there is any
18 preclusive effect or narrowing or limiting of the
19 issues before we have to go through the burden as a
20 non-party of litigating the same objections with
21 Defendant Cuomo in the Southern District.

22 THE COURT: Okay. Thank you.

23 Ms. Trzaskoma?

24 MS. TRZASKOMA: May I just be heard briefly
25 on that, Your Honor, because I don't -- because it's

1 not -- I don't think that's entirely accurate.

2 THE COURT: Yes. Go ahead.

3 MS. TRZASKOMA: So --

4 THE COURT: I mean, you don't know whether
5 it's accurate or not. I mean -- go ahead.

6 MS. TRZASKOMA: Yeah.

7 Well, so Ms. Longley is correct that the
8 types of documents we are seeking in both cases,
9 interview memos, unredacted transcripts, that's the
10 same. What's different are the, you know, the, kind
11 of, like, the buckets of those.

12 So in the Trooper 1 action, for example, we
13 narrowed our request to all of the interview memos
14 involving any current or former member of the New
15 York State Police and any interview memo of any of
16 the ten other claimants who are in Trooper 1's
17 complaint.

18 And, arguably, most of that material is not
19 relevant to Ms. Bennett's claim, particularly if
20 she's not planning to rely on Trooper 1.

21 THE COURT: What are you seeking -- which
22 memos are you seeking here?

23 MS. TRZASKOMA: And here, we're seeking
24 memos of executive chamber employees, current and
25 former who were interviewed, since that relates to

1 the environment, the work environment at the
2 Executive Chamber, and any interview memos or
3 unredacted transcripts that mention Ms. Bennett.

4 THE COURT: With that narrowing,
5 Ms. Longley, does it change anything about the
6 Attorney General's position?

7 MS. LONGLEY: No, Your Honor, it doesn't.

8 And I will say that we heard earlier
9 Ms. Trzaskoma talk about that, yes, what she wants
10 to do here is re-litigate the OAG report. And I'll
11 just say this was an OAG investigation into sexual
12 harassment by the governor in the Executive Chamber.
13 And so by saying we're only seeking interview memos
14 of current or former executive chamber employees,
15 that doesn't really narrow things very much at all.
16 It's almost all of the witnesses.

17 So it may look on paper like a narrowing.
18 It's not a meaningful narrowing. And it really goes
19 to, again, what we heard before is that -- and this
20 is exactly what Cuomo argued in Trooper 1
21 unsuccessfully, which is that he wants to
22 re-litigate the OAG report.

23 And if I can go to this concept that was
24 brought up about retaliation, I just want to put on
25 the record that whether or not -- you know,

1 retaliation as a legal matter, does not depend on
2 the validity of the underlying complaint. So it
3 doesn't depend on whether there was sexual
4 harassment or not, it doesn't depend on if the
5 investigation was thorough.

6 You know, Defendant Cuomo wants to pursue
7 those things for his own political rehabilitation.
8 It's not about the actual legal claim for
9 retaliation, which is just did the person engage in
10 protected activity; and then was there, you know, a
11 retaliatory act in response to engaging in the
12 protected activity. You don't need to re-litigate
13 the OAG report in order to deal with the retaliation
14 claim as a matter of law.

15 So I think we're getting far afield, and
16 we're talking also about, you know, the scope and
17 the relevance of certain interview memos here as
18 opposed to Trooper 1, but I don't want to lose sight
19 of the fact that we've also asserted a sovereign
20 immunity defense in both cases; the briefing of that
21 is fully submitted.

22 You know, Judge Merkl may want more
23 briefing. But if she gets to that, I believe it
24 would happen before anything would happen in the
25 Bennett case. Again, I think it makes sense to see

1 how things play out in the Eastern District, where
2 we're litigating the exact same issues, the exact
3 same sovereign immunity defense. Relevance also
4 came up.

5 So everything is really still on the table
6 there. They've sought reconsideration of
7 Judge Merkl's denial of their motion to compel,
8 which she denied on relevance and burden grounds and
9 proportionality, but she hasn't reached the other
10 issues. She may reach them. It seems like she is
11 going to reach at least some of them.

12 And really what Defendant Cuomo is trying
13 to do here is get another do-over. And he even
14 indicated that in the last conference before
15 Judge Merkl, where we brought up the fact that he's
16 now subpoenaing our lawyers who were deputized to
17 carry out a government investigation under Executive
18 Law 63(8). And he has a novel theory that he can --
19 you know, if he can't get the materials from us
20 because of sovereign immunity, he can just subpoena
21 our deputized lawyers to get the materials that way.
22 And --

23 THE COURT: We don't need to get into that
24 today.

25 MS. LONGLEY: Okay.

1 THE COURT: That's not before me.

2 But what if the subpoena were limited to
3 interview memos, the interview memos for Ms.
4 Bennett's interview and any interview memos that
5 reference Ms. Bennett, as well as any documents that
6 the AG received in connection with Ms. Bennett's
7 allegations, whether from her or from somebody else?

8 What if it were limited that way; would the
9 AG still stand on the sovereign immunity objection?

10 MS. LONGLEY: Yes, Your Honor. I think
11 because you're going to any interview memos.

12 And, I'm sorry, I didn't catch the second
13 category. You said plaintiff's interview memo. And
14 then who were the other -- what were the other
15 interview memos?

16 THE COURT: The interview memos that
17 discussed -- just the portions of any interview
18 memos that discussed Ms. Bennett.

19 MS. LONGLEY: Yeah, so we have asserted
20 privilege -- in addition to sovereign immunity,
21 we've asserted privilege over the entirety of the
22 interview memos. Plaintiff doesn't have her own
23 interview memo. Nobody has their interview memo.
24 And there's a reason for that.

25 THE COURT: That's the review that

1 Judge Merkl is doing, though. We're not having two
2 magistrate judges do two privilege reviews. It's
3 bad enough that one of us has to do it. And I feel
4 badly that it's Judge Merkl bearing the brunt of it.
5 So, you know we're not going to -- I don't want to
6 risk conflicting privilege decisions either.

7 MS. LONGLEY: Which is why it makes sense
8 to wait for her to rule on it before, you know, the
9 same thing gets submitted to Your Honor.

10 And I will say that the privilege issues
11 are really important to this office because there's
12 attorney-client privilege in there. There's
13 attorney work product. But the biggest thing is
14 probably law enforcement privilege on those
15 documents. And the documents are full of
16 information about people that's not public,
17 cooperating witnesses.

18 And as we mentioned briefly in our letter,
19 I think it's in footnote 1, which has even been
20 borne out more recently, there has been from the
21 beginning, there were credible fears by cooperating
22 witnesses of retaliation that has been -- there's
23 been a lot in the press. There's a lot in our
24 briefing in Trooper 1.

25 Just last week, the First Department

1 reinstated a retaliation claim brought by a former
2 executive chamber employee who claimed -- alleged
3 that he was fired because he spoke to the OAG
4 investigators and corroborated sexual harassment by
5 Governor Cuomo. And that was just reinstated. And
6 this is why, like, you know, it is very important to
7 our office not to be disclosing to the very person
8 who they're -- who they have credible fears of
9 retaliation exactly what they said. And it's really
10 not germane to Ms. Bennett's lawsuit here. It's not
11 relevant, it's not proportional, and there are real
12 privacy interests, privilege interests, sovereign
13 immunity interests.

14 So I think if you weigh -- if you look at
15 the big picture and all the interests on either
16 side, there really is not a compelling case to --
17 for us to consider providing them voluntarily.

18 THE COURT: Okay. All right.

19 Let's circle back to the timing with
20 respect to Ms. Boylan because it's going to
21 influence the timing with respect to the AG
22 subpoena.

23 Is two weeks enough time for the parties to
24 meet and confer and be prepared to report to me
25 whether they've been able to reach an agreement with

1 respect to the search terms that Ms. Boylan will
2 implement?

3 Ms. Perry, is that achievable by
4 January 18th?

5 MS. PERRY: I'm sorry, Your Honor. I was
6 on mute. By the 18th? Was that for me?

7 THE COURT: Yeah. Well, the question is
8 for you, and it's --

9 MS. PERRY: Yes.

10 THE COURT: -- whether two weeks is enough
11 time for you to meet and confer with Ms. Trzaskoma
12 and Ms. DeRosa's counsel about the search terms that
13 Ms. Boylan would implement using the guidance that I
14 gave earlier?

15 MS. PERRY: Yes, Your Honor. That's more
16 than enough time.

17 THE COURT: And what I would be doing is
18 asking the parties to report to me then as to
19 whether they've been able to reach an agreement or
20 if there's still a dispute. If there's still a
21 dispute, then we'll have another conference. And
22 then, I guess, why don't we in an abundance of
23 caution, I'll give you a date for another conference
24 the week after that.

25 How is -- you're on the west coast, right,

1 Ms. Perry?

2 MS. PERRY: No, Your Honor. I'm in
3 New York.

4 THE COURT: Oh, okay. 10 a.m. on Monday,
5 January 22nd for a conference.

6 MR. MORVILLO: Your Honor?

7 THE COURT: Yes?

8 MR. MORVILLO: This is Greg Morvillo.

9 Mr. Gruppuso and I are in a Rule 104
10 hearing that day in New Jersey on the 22nd, 23rd and
11 24th.

12 THE COURT: Okay. How about 3 o'clock on
13 the 25th?

14 MS. TRZASKOMA: That's good for me.

15 MR. MORVILLO: That works.

16 THE COURT: All right.

17 MS. PERRY: Actually --

18 THE COURT: Who is that a problem for?

19 MS. PERRY: Yeah, I'm going to be out of
20 town for a board meeting.

21 THE COURT: How about the next day at
22 3 o'clock; Friday the 26th.

23 MS. PERRY: I'll still be at the board
24 meeting, but I could step out.

25 THE COURT: Okay. All right.

1 So 3 p.m. on the 26th, then we'll speak.
2 And what else, since we're not meeting until
3 Friday --

4 MS. TRZASKOMA: Your Honor, this is
5 Ms. Trzaskoma. I am not available on the 26th at 3.
6 I could do earlier that day.

7 THE COURT: I'm committed on another case
8 earlier that day. How about the 29th?

9 MS. TRZASKOMA: The afternoon of the 29th
10 works.

11 THE COURT: Okay.

12 Anybody else have a problem with the
13 afternoon of the 29th?

14 MS. PERRY: I do not.

15 THE COURT: Okay. All right. 2 o'clock on
16 the 29th.

17 Ms. Longley, I'll get back to you, but --
18 because I will want to by that time see where things
19 have come out with respect to Judge Merkl. And
20 we'll make a decision at that point whether we will
21 have to do motion practice and, if so, what the
22 scope will be.

23 MS. LONGLEY: Okay, Your Honor. Sorry. So
24 are you asking about my availability on that day?

25 THE COURT: Yes.

1 MS. LONGLEY: Okay. Sorry. Could you --
2 do you remind repeating the day?

3 THE COURT: Yes. It's Monday, January
4 29th, at 2 p.m.

5 MS. LONGLEY: That should work.

6 THE COURT: Okay. Great.

7 All right. So we'll ask the parties to
8 meet and confer between now and then. And by
9 January -- since we're not meeting until the 29th,
10 I'll give you until the 24th to provide me with a
11 joint status letter with respect to the parties
12 meeting and conferring and hopefully reaching an
13 agreement with respect to Ms. Boylan. And then
14 we'll plan to discuss at that point whether any
15 developments in the Trooper 1 case have occurred
16 and, if so, how that will impact the scope of any
17 briefing that we would need here with respect to the
18 subpoena to the Attorney General; okay?

19 MS. TRZASKOMA: Okay. Your Honor, this is
20 Theresa Trzaskoma.

21 Sorry. I appreciate the Court's patience.
22 I just have two issues that I want -- two points I
23 want to make in response to Ms. Longley because --
24 so the record is clear.

25 THE COURT: Okay.

1 MS. TRZASKOMA: First of all, we do have
2 Ms. Bennett's interview memo, which Governor Cuomo
3 received in the context of discovery in a criminal
4 investigation, in a criminal case that was
5 dismissed.

6 THE COURT: Okay.

7 MS. TRZASKOMA: It's redacted, as I
8 understand all of the interview memos are, for
9 information that arguably is -- contains some sort
10 of attorney impressions.

11 And the second -- so I just want to raise
12 that because I think it's not the case that, you
13 know, those interview memos have been kept in a
14 lockbox because they're privileged.

15 And the second issue is that the privilege
16 review that Judge Merkl is doing, there is -- I
17 think there is actually very little overlap between
18 what Judge Merkl is reviewing right now and what
19 Your Honor would be reviewing. I mean, the
20 privilege log, which I'm -- which the Attorney
21 General's Office produced, the vast majority of the
22 interview memos are from troopers or former troopers
23 and other complainants, so --

24 THE COURT: Right, but she's reviewing for
25 the same privileges, though. So that's the point --

1 that's my point about not having to do -- make two
2 magistrate judges do two privilege reviews.

3 I understand there may be different
4 documents, but she's reviewing for the same
5 assertions of privilege, of attorney-client work
6 product and law enforcement. So it's the same.
7 It's the same nature that she's considering. I
8 realize it may be a different memo, you know, a
9 different name on the memo, but it's the same
10 privileges.

11 MS. TRZASKOMA: Well, I guess this goes --
12 yeah, I mean, it may be that there's some
13 combination of privilege and relevance. I don't
14 know what her review is encompassing, but I just --
15 I wanted to make clear that there -- that it's a
16 different universe of materials in this case, and
17 also that the interview -- many -- not many -- a
18 handful of interview memos including Ms. Bennett's,
19 have been disclosed, and we have them, so ...

20 THE COURT: See, that will go to weight.
21 That will go to -- if there is a privilege, whether
22 there's a waiver, which would be addressed in the
23 context of any briefing if we have to do that, so --

24 MS. TRZASKOMA: Okay. Thank you,
25 Your Honor.

1 THE COURT: Yes.

2 MS. LONGLEY: Your Honor?

3 THE COURT: Yes?

4 MS. LONGLEY: It's Serena Longley from the
5 AG's office. Can I just, you know, comment on the
6 interview memos that Cuomo has?

7 He got them through criminal discovery. He
8 did not get them from us. And I look forward to --
9 you know, we can certainly brief the Court if this
10 gets to Your Honor about why the privilege has not
11 been waived on that, but it hasn't, and, you know,
12 he got those in the context of criminal discovery in
13 New York State Criminal Court, which is very
14 different standard than is in place here in the
15 civil court.

16 THE COURT: I understand. I'm not making
17 any ruling, and nobody should construe anything that
18 I've said here today, things that are not before me
19 and issues that have not been briefed, we're not
20 making a finding on those. So that's the reason for
21 deferring this and having, hopefully, a clearer
22 discussion about that.

23 Again, I'm just really trying to minimize
24 the number of issues that have to be briefed because
25 at a -- it does seem -- from what I understand, and

1 I've read most, if not all, of what's been presented
2 to Judge Merkl, obviously, not the documents
3 themselves, but I've read the transcripts of all of
4 her discussions with all of you, and a lot of the
5 issues are overlapping, and it's burdensome for the
6 parties, and it's burdensome for two courts to have
7 to resolve the same issue in multiple places,
8 multiple times. So that's why I'm trying to
9 streamline this, so that if we do have briefing,
10 it's going to be on a quick turnaround.

11 I mean, the other issue that we haven't
12 talked about, but we'll have to talk about on the
13 29th, is that the fact discovery cutoff is the end
14 of February. Clearly, we're not going to make that.
15 So we're going to have to assess -- the parties
16 should be prepared to discuss at that conference,
17 you know, what's still remaining and, you know,
18 what, if any, additional time is going to be needed.
19 So we don't have to get to that today, but, you
20 know, it's out there. All right.

21 Ms. Schnell, for Ms. Bennett, anything else
22 you would like to raise today while we're assembled?

23 MS. SCHNELL: No, Your Honor, other than we
24 have been unsuccessful in seeking deposition dates
25 from the defendants. And if that has not been

1 resolved by the 29th, we would like to address that
2 at that conference, Your Honor.

3 THE COURT: Well, what we'll do is we'll
4 let anybody who has something to say, you need to
5 get a letter to me by January 24th at 5 p.m. And
6 that's your deadline. I'm not taking -- nobody is
7 going to be able to raise any issues or pop up or
8 throw something else at me after 5 o'clock on
9 January 24th, so ...

10 MS. SCHNELL: Absolutely, Your Honor.

11 That's --

12 THE COURT: If you want to have it be
13 heard -- if you want me consider it at the January
14 29th conference, that's the deadline.

15 MS. SCHNELL: We will absolutely abide by
16 that, Your Honor. Not a problem.

17 THE COURT: Okay. Thank you.

18 Ms. Trzaskoma, anything else you would like
19 to cover today?

20 MS. TRZASKOMA: No, Your Honor. Thank you.

21 THE COURT: All right. Thank you.

22 Ms. Sulkowski?

23 MS. SULKOWSKI: Nothing, Your Honor. Thank
24 you.

25 THE COURT: And Ms. Longley?

1 MS. LONGLEY: Yes. One thing, Your Honor.

2 In the event there are any developments in
3 the Trooper 1 case, as it relates to the subpoena to
4 the Attorney General's Office, would you like us to
5 provide a, you know, update by letter to the Court
6 whenever that happens?

7 THE COURT: Yes, I do. It doesn't have to
8 be immediate, but you can --

9 MS. LONGLEY: Yeah.

10 THE COURT: -- do it in your January 24th
11 letter.

12 MS. LONGLEY: Okay. And in the unlikely
13 event there's a ruling between the 24th and the
14 29th, I would think Your Honor would want us to
15 write anyways to let you know.

16 THE COURT: You can certainly let me know
17 before then. Just not after then.

18 MS. LONGLEY: Okay. Thanks.

19 THE COURT: All right. Either of the other
20 defendants, Ms. DesRosiers or Ms. Mogul, anything
21 else you want to raise?

22 It's nothing or either that they're on
23 mute. Okay.

24 MR. DELIKAT: No, Your Honor, for Defendant
25 Mogul.

1 THE COURT: Okay. Thank you.

2 And for Ms. DesRosiers?

3 MR. SCHWAB: Nothing to add, Your Honor.

4 THE COURT: Okay. All right.

5 Thank you very much, everyone. You'll see
6 a post-conference order from us. And we'll be
7 adjourned.

8 Thank you. Have a good afternoon.

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C E R T I F I C A T E

4 I, Adrienne M. Mignano, certify that the
5 foregoing transcript of proceedings in the case of
6 Bennett v. Cuomo, et al; Docket #22CV7846 was
7 prepared using digital transcription software and is
8 a true and accurate record of the proceedings.

ADRIENNE M. MIGNANO, RPR

14 Date: January 6, 2024